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A CONSTITUTIONAL CONVENTION — DESIRABLE AND NECESSARY

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THE Constitution of the State of New York provides that:

At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question "Shall there be a convention to revise the constitution and amend the same?" shall be submitted to and decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed.[1]

By express constitutional provision, therefore, it is for the people to determine whether or not they wish to revise the charter of government. When this provision was advocated, in the Constitutional Convention of 1846, it was upon the ground that " 'it asserted a great principle that all power was inherent in the people, and that once in twenty years they might take the matter into their own hands.' "[2] This same reasoning of delegate Bascom commends itself to us today.

The cause of judicial reform is again being advocated in New York. Indeed, it is probably the single most-discussed feature of our state government today. Structural, fiscal and administrative unification of our courts is demanded; and at

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[1] N.Y. CONST. art. 19, § 2.

[2] 2 LINCOLN, CONSTITUTIONAL HISTORY OF NEW YORK 210 (1905).

the opening of the legislative session in January, 1957, the Temporary Commission on the Courts submitted to the Legislature a proposed amendment to the Judiciary Article of the Constitution.[3] That proposal has given rise to two partisan vocal, and apparently irreconcilable, viewpoints — one opposed to the plan and the other favoring it. There have also been reports in the press that modifications of the plan would have to be made, if it is to be considered favorably.[4]

It is the intent of the Temporary Commission that its proposed Judiciary Article, as finally determined, be submitted to two successive legislatures and thereafter to the people for adoption or rejection.[5] The Commission has stated that its plan, if adopted, will not become effective before 1961.[6] Chronology is important here. If the matter of amendment of the Judiciary Article was submitted to the Constitutional Convention it could become effective in 1960.

Proponents of the plan have argued that it would be unwise to consider revision of the Judiciary Article, in conjunction with controversial matters, at a Constitutional Convention, assuming that the people vote for a convention. Those who argue for consideration and possible revision of the Judiciary Article at a Constitutional Convention, contend that it is equally unwise to burden the Legislature, already overwhelmed as it is, with the additional and stupendous task of assessing the pros and cons of the Temporary Commission plan. These partisans also contend that it would be the wiser course to submit any proposed amendment of the Judiciary Article to a group specifically chosen for that purpose at a Constitutional Convention.

The argument is also advanced that since time is evidently not a factor in the Commission's plan, it should prop-

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[3] See 1957 Report of the Temporary Commission on the Courts, MCKINNEY'S SESSION LAWS OF NEW YORK A-25 (1957). The report was dated December 14, 1956.

[4] See N.Y. Times, Feb. 20, 1957, p. 27, col. 1; N.Y. Herald-Tribune, Feb. 1, 1957, p. 11, col. 6.

[5] See note 3 *supra*.

[6] Section 33 of the draft Judiciary Article provides:

"This article shall become a part of the constitution on the first day of January nineteen hundred and sixty-one, and shall be in force from and including that date, notwithstanding the provisions of section one of article nineteen of the constitution."

erly be submitted to the so-called Rockefeller Commission created in 1956 to study and report on proposals for changes in and simplification of the Constitution.[7] If revision of the Judiciary Article is so necessary, the argument runs, it should be submitted to the Rockefeller Commission in the interests of orderly governmental procedure.

The Judicial Conference is dedicated to the proposition that the 16,000,000 people of the state are entitled to, and must have, efficient and prompt administration of justice. That body, however, has been unable to formulate any recommendation with respect to the Commission's plan because of the fact that the plan is still subject to modification. At a recent public hearing, Chief Judge Conway counselled delay in the consideration of the plan pending resolution of some of the features of the plan and its evaluation in the light of the objectives it was designed to achieve.[8] I am aware of the arguments advanced, in one form or another, that delay may result in no plan at all. These arguments are without basis. The Temporary Commission itself looks to 1961 as the effective date of its plan; a Constitutional Convention could be convened and terminated long before that date. Regardless of the action of this Legislature and that of 1959 with respect to the Temporary Commission's proposal for court reform, it is my belief that the proposal, indeed, any proposal of this nature, should also properly be submitted to a Constitutional Convention. By so doing, the people would be assured that their voices would be heard and their desires made known on the subject of court reform.

I trust that I have not concentrated unduly upon the plan of the Temporary Commission on the Courts. My references to it are only intended as a predicate for the thesis I present—that court reform is a matter of concern to all the people of the state. However, the Constitution of this state is an *entire* document. It cannot—and should not—be compartmented, segmented, or dissected whatever reason may be ascribed therefor. Each article of the Constitution must be considered as it relates to the whole document. Compara-

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[7] Laws of N.Y. 1956, c. 814.
[8] See N.Y. Times, Feb. 13, 1957, p. 1, col. 5.

tively few persons are equipped to assess adequately any single article of the Constitution; fewer still are equipped to assess a particular article *and its effect upon the other articles of the Constitution.* Yet, properly, the latter is what should be done. Consideration of any article as an isolated matter, out of context, could be, ultimately, a disservice to the people, from whom the powers of government derive. We should not pay only lip service to that principle.

An example will illustrate the point. One of the objectives of court reform is unification of the fiscal affairs of the Judiciary. Presumably, a revised Judiciary Article of the Constitution would establish such financial unity; but it must be noted that financial matters generally, including the Judiciary, are regulated by another article, Article VII, entitled "State Finances." Unless these two articles are considered together, it is difficult to see how fiscal unity can be achieved. Similarly, if administrative unification within the judicial branch of government is to be effected, it will be necessary to consider Article IX, "Local Governments," which deals with the clerks of the supreme court. Likewise, it will be necessary to consider Article III, relating to the Legislature, and Article XIII, "Public Officers," in connection with any revision of the Judiciary Article. Each of these articles has an effect upon the Judiciary; and each in turn will be affected by any revision of present Article VI. In other words, and conceding the necessity therefor, reform in the judicial system cannot and should not be treated as an abstract problem. It must be related to the other phases of our governmental structure and operation.

Every citizen is vitally interested in bringing administrative cohesion and co-ordination to our court system. Admittedly, there are problems, and a solution must be found for them. We will fail however if, in achieving that high aim, we throw the other integral parts of our governmental machinery out of gear.

In the years since the last Constitutional Convention, our state has grown mightily in population, industry, education—indeed, in all fields of human endeavor and relations. With this growth have come new problems which were undreamed of twenty years ago. Our leaders and people must

adapt themselves to the situations which now confront them, the machinery of government must be examined and, if necessary, equated with the changing times. One commentator has stated the proposition succinctly and well:

> Perfection has not been reached, and is not to be expected. A constitution presumably expresses in outline the theory, purposes, and forms of organized society; as society fluctuates it is found that some constitutional regulations are too lax and others too rigid, and it must be the constant effort of statesmen and constitution-makers to adjust a proper equilibrium of the various parts of government, loosening or tightening the bands of limitation as circumstances seem to require.[9]

The people of the state, acting in their wisdom, should be afforded the opportunity—denied to so many—of maintaining the equilibrium which is our heritage and pride.

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[9] 2 LINCOLN, CONSTITUTIONAL HISTORY OF NEW YORK 9 (1905).